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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 JAMES KARNATH,

12 Plaintiff,

13 v.

14 TRACY DANIELS,

15 Defendant.

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) CASE NO. C08-1002-RSM-BAT
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) REPORT AND RECOMMENDATION
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16 INTRODUCTION AND SUMMARY CONCLUSION

17 This is a *pro se* civil rights action under 42 U.S.C. § 1983. Plaintiff David Karnath is a
18 Washington State prisoner who is currently in custody at the Stafford Creek Corrections Center in
19 Aberdeen Washington. Plaintiff has filed a “Motion for Writ of Order of Transfer Back to W.S.R.
20 from W.S.P.” This motion is construed as a motion for preliminary injunctive relief. This Court,
21 having reviewed plaintiff’s motion, defendant’s response thereto, and the balance of the record,
22 concludes that plaintiff’s motion for preliminary injunctive relief should be denied.

23 DISCUSSION

24 The basic function of a preliminary injunction is to preserve the *status quo ante litem*
25 pending a determination of the action on the merits. *Los Angeles Memorial Coliseum Commission v.*
26 *National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). A party seeking a preliminary

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1 injunction must fulfill one of two standards, the "traditional" or the "alternative." *Cassim v. Bowen*,
2 824 F.2d 791, 795 (9th Cir. 1987).

3 Under the traditional standard, a court may issue preliminary relief if it finds that (1) the
4 moving party will suffer irreparable injury if the relief is denied; (2) the moving party will
5 probably prevail on the merits; (3) the balance of potential harm favors the moving party;
6 and (4) the public interest favors granting relief. . . . Under the alternative standard, the
moving party may meet its burden by demonstrating either (1) a combination of probable
success and the possibility of irreparable injury or (2) that serious questions are raised and
the balance of hardships tips sharply in its favor.

7 *Cassim v. Bowen*, 824 F.2d at 795 (citations omitted).

8 The standards "are not discrete tests, but are instead 'outer reaches of a single continuum.'"
9 *Pratt v. Rowland*, 65 F.3d 802, 805 (9th Cir. 1995) (citing *Chalk v. United States Dist. Ct.*, 840 F.2d
10 701, 704 (9th Cir. 1988)). To obtain injunctive relief under either standard the moving party must
11 demonstrate exposure to irreparable harm absent the requested judicial intervention. *Caribbean*
12 *Marine Services Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). Speculative injury does not
13 constitute irreparable injury sufficient to warrant granting preliminary relief. *Id.* Rather, "a plaintiff
14 must *demonstrate* immediate threatened injury as a prerequisite to preliminary injunctive relief." *Id.*
15 (emphasis in original).

16 At the time plaintiff filed the instant civil rights action, he was being housed at the Monroe
17 Corrections Complex - Washington State Reformatory Unit ("WSRU") in Monroe, Washington. He
18 was subsequently transferred to the Washington State Penitentiary ("WSP") in Walla Walla,
19 Washington. Plaintiff filed his motion for preliminary injunctive relief following his transfer to
20 WSP. He seeks, by way of the instant motion, a transfer from WSP back to the WSRU general
21 population. Plaintiff asserts in his motion that there was no justification for his transfer to WSP and
22 that the purpose of the transfer was to block his access to the courts. In his memorandum in support
23 of his motion for preliminary injunctive relief, plaintiff asserts that he had a liberty interest in
24 remaining at WSRU because his transfer to WSP precludes him from practicing his religion as he
25 did at WSRU and it precludes him from litigating a pending personal restraint petition in the state
26 courts as well as the instant civil rights action. Plaintiff also appears to assert in his memorandum

1 that his transfer back to WSRU general population is necessary so that he can receive treatment for a
2 chronic medical condition which cannot be treated at WSP.

3 Defendant, in his response to plaintiff's motion, argues that plaintiff's request for preliminary
4 injunctive relief is moot because he is no longer housed at the institution where the defendant works
5 or at the institution he wants to be transferred from. Defendant also argues that the motion should be
6 stricken because it raises claims not raised by plaintiff in his civil rights complaint. Finally,
7 defendant argues that the motion should be denied because plaintiff has not met the burden required
8 for a preliminary injunction.

9 It is clear from the record that plaintiff is now incarcerated at the Stafford Creek Corrections
10 Center in Aberdeen, Washington. Thus, his motion seeking to be transferred out of WSP appears
11 moot. Even assuming plaintiff is still seeking a transfer back to WSRU, he offers no evidence that
12 the sole defendant in this lawsuit, Tracy Daniels, a WSRU staff member, has any ability to direct
13 plaintiff's housing assignment nor does plaintiff offer any evidence that he will suffer irreparable
14 harm if the requested relief is not granted.

15 CONCLUSION

16 Based on the foregoing, this Court recommends that plaintiff's motion for preliminary
17 injunctive relief, be denied. A proposed order accompanies this Report and Recommendation.

18 DATED this 1st day of December, 2008.

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22 BRIAN A. TSUCHIDA
23 United States Magistrate Judge
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